

## DEPARTMENT OF STATE REVENUE

04-20200312R.ODR

**Memorandum of Decision: 04-20200312**  
**Sales/Use Tax**  
**Tax Periods September 2019 - October 2019**

**NOTICE:** IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

**HOLDING**

Taxpayer failed to establish that she was entitled to a refund of sales tax as a retail merchant engaged in reselling tangible personal property.

**ISSUE**

**I. Sales & Use Tax - Claim for Refund.**

**Authority:** IC § 6-2.5-5-8; IC § 6-2.5-1-2; IC § 6-2.5-4-1; IC § 6-2.5-4-2; IC § 6-2.5-8-1; IC § 6-2.5-1-8; *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, (Ind. Tax Ct. 1999); *Mynsberge v. Dep't of State Revenue*, 716 N.E.2d 629, (Ind. Tax Ct. 1999); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399, (Ind. Tax Ct. 1991).

Taxpayer protests the Department's denial of a claim for refund.

**STATEMENT OF FACTS**

Taxpayer filed a sales and use tax Claim for Refund (GA-110L) with the Indiana Department of Revenue ("Department") for the tax Periods of September 2019 and October 2019. The Department denied Taxpayer's refund claim because Taxpayer failed to register as a retail merchant in Indiana, and therefore does not qualify for a resale exemption. Taxpayer filed a protest, the Department held an administrative hearing, and this written ruling results. Additional facts will be provided, as necessary.

**I. Sales & Use Tax - Claim for Refund.**

**DISCUSSION**

Taxpayer is an advisor for a company, and she resells items purchased in Indiana. Taxpayer states that she purchased items in Indiana and paid Indiana sales tax at the time of the purchases. Taxpayer later sold those items at expositions in Indiana and Tennessee. Taxpayer explains that she collected Tennessee sales tax on the sales in Tennessee and remitted that sales tax to the State of Tennessee. This, Taxpayer asserts, qualifies for the resale exemption and therefore she should be refunded the sales tax paid at the time of purchase of the tangible personal property which was later resold.

"[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

When a taxpayer determines he or she has overpaid a tax, the taxpayer must file a GA-110L form as prescribed by the Department in order to claim a refund. IC § 6-8.1-9-1(a). The claim must "set forth the amount of the refund to which the person is entitled and the reasons that the person is entitled to the refund." *Id.* Consequently, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2011).

IC § 6-2.5-5-8(b), like all tax exemption provisions, is strictly construed against exemption from the tax. *Tri-States Double Cola Bottling Co. v. Dep't of State Revenue*, 706 N.E.2d 282, 283 (Ind. Tax Ct. 1999); *Mynsberge v. Dep't*

of *State Revenue*, 716 N.E.2d 629, 636 (Ind. Tax Ct. 1999). Nevertheless, the Department is aware of the countervailing rule that a "statute must not be construed so narrowly that it does not give effect to legislative intent because the intent of the legislature embodied in a statute constitutes the law." *General Motors Corp. v. Indiana Dept. of State Revenue*, 578 N.E.2d 399, 404 (Ind. Tax Ct. 1991).

IC § 6-2.5-1-2(a) provides, "'Retail transaction' means a transaction of a retail merchant that constitutes selling at retail as described in [IC 6-2.5-4-1](#), that constitutes making a wholesale sale as described in [IC 6-2.5-4-2](#), or that is described in any other section of IC § 6-2.5-4."

A retail merchant is a person who is described as a retail merchant in § [IC 6-2.5-4-1](#) below:

- (a) A person is a retail merchant making a retail transaction when the person engages in selling at retail.
- (b) A person is engaged in selling at retail when, in the ordinary course of the person's regularly conducted trade or business, the person:
  - (1) *acquires tangible personal property for the purpose of resale*; and
  - (2) transfers that property to another person for consideration.
- (c) For purposes of determining what constitutes selling at retail, it does not matter whether:
  - (1) the property is transferred in the same form as when it was acquired;
  - (2) the property is transferred alone or in conjunction with other property or services; or
  - (3) the property is transferred conditionally or otherwise.
- (d) Notwithstanding subsection (b), a person is not selling at retail if the person is making a wholesale sale as described in section 2 of this chapter. However, in the case of sales of gasoline (as defined in [IC 6-6-1.1-103](#)), a person shall collect the gasoline use tax as provided in [IC 6-2.5-3.5](#).

*(Emphasis added).*

Under IC § 6-2.5-1-8 "[a] retail merchant may not make a retail transaction in Indiana, unless the retail merchant has applied for a registered retail merchant's certificate."

Taxpayer protests that the sales in question were for resale and were not subject to sales tax. IC § 6-2.5-5-8(b) provides in relevant part:

[T]ransactions involving tangible personal property . . . are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing *in the ordinary course of the person's business* without changing the form of the property.

After review of the documentation supplied in the course of the protest process, Taxpayer has not established that she was the retail merchant and not an employee of a retail merchant. Undoubtedly, retail transactions did occur, as defined under IC § 6-2.5-4-1(b), but the documentation does not establish that Taxpayer was the retail merchant making those retail sales. Rather, Taxpayer was acting as an employee of a retail merchant. Employees make retail sales on behalf of their employers. It is the employer who is the retail merchant and who is eligible for refund of sales tax on tangible personal property purchased for resale, as provided by IC § 6-2.5-5-8(b). Further, the documentation which Taxpayer supplied as part of the protest does not establish whether it was Taxpayer or her employer which purchased the original items before the resale. Her employer may be a registered retail merchant with Indiana, but Taxpayer is not a registered retail merchant. Thus, because Taxpayer is not registered as a retail merchant and because Taxpayer failed to show who bought the original product, Taxpayer is not entitled to a refund.

## FINDING

Taxpayer's protest is denied.

April 30, 2021

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